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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1057 of 1992

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

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2. To be referred to the Reporter or not? - No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? - No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

KIRANSING VAKHATSING PARMAR

Versus

RAMESHBHAI PATEL

Appearance:

MR SP HASURKAR for Petitioner

MR BR SHAH for Respondent No. 1

MR HN SHAH for Respondent No. 2

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 08/08/96

ORAL JUDGEMENT

Petitioner is the original plaintiff in Rent Suit No.104 of 1990, who prayed for permanent injunction, restraining the respondents from ousting him from a tenement, consisting of one room and kitchen in Block No.B-52, Ramnagar Society, Nandesari, Vadodara. The suit was instituted on an apprehension that though he has been a tenant for the last eight years and paying the monthly rent of Rs.100/-, no rent receipts were issued and he was threatened by the respondents to vacate the tenement. For that matter, it was also averred in the suit that on 18.2.1990, a threat was held out to him that he would be evicted from the tenement. He, therefore, upon instituting the suit on 21st of February, 1990, took out a motion for interim relief. Ad interim relief was granted in his favour and upon showing cause by the respondent, by the impugned order dated 21st December, 1990, the ad interim injunction was confirmed until the final disposal of the suit.

Being aggrieved by the interim injunction, the respondent preferred Civil Miscellaneous Appeal No.41 of 1991 before the District Court at Vadodara. This appeal was disposed of by the Joint District Judge, Vadodara on 22nd July, 1992, whereby the appeal of the respondents was allowed and the interim relief granted by the trial court on 21st December, 1990 was vacated. This order made by the learned District Judge has landed the petitioner in the present revision application.

Rule was issued in this Civil Revision Application and the petitioner was protected by interim relief on 27th of August, 1992. Though appearance has been filed on behalf of the respondent, none appeared for the respondents today, nor for that matter, the respondents are present. Large number of grievances are made in this revision application. In that it is contended that the appellate court was in error in holding that the petitioner had produced only affidavit evidence, whereas, in fact, the petitioner has produced documentary evidence, such as letters and postcards addressed to the respondents at the address of the suit premises as also the report of the Commissioner. It appears that the trial court had appointed a Commissioner to find out who is in actual possession of the suit premises and the Commissioner, by his report, dated 21st February, 1990, the date on which the suit was filed, had clearly recorded that the petitioner and his family were in possession of the suit premises and for that matter,

the household of the petitioner was existing in the suit premises.

The trial court, however, was not impressed by the defence on behalf of the respondents that the petitioner had trespassed into the premises by breaking open the lock, and had taken forcible possession of the tenement without any title, claim or interest in respect of the same, nor by the averment of the respondents that the block, in which the tenement is existing, had been constructed sometime in the year 1985 and that the same had been allotted in favour of respondent No.2. Upon rejecting this defence, the trial court has prima facie come to the conclusion that the petitioner had made out a prima facie case that he was in occupation and possession of the suit premises sometime prior to and on the date of the suit and that is how granted the injunction.

The appellate court, in reversing the order, has, in the first place, observed that affidavits of witnesses are freely available to support the stand of the parties before the courts of law and, therefore, the affidavit evidence has to be ignored and documentary evidence has to be relied upon. There can be no quarrel on the proposition that in the matter of appreciation of evidence, documentary evidence is more reliable than the oral evidence or for that matter, the evidence disclosed on affidavits. But it is, however, pertinent to note that nowhere the learned appellate court has discussed the affidavit evidence of the deponent and has come to a finding that the deponents of the affidavit in favour of one party or the other is not reliable. In the absence of such a finding, it is difficult to accept the generalised statement of the appellate court that in the present day times, witnesses are available to oblige the parties to swear affidavits. Upon going through the material on record, it is worthwhile noticing that the appellate court has, in fact, ignored some material aspects of the matter and there are, in fact, a number of them. It is not understood why the appellate court forgot to notice that for the first time the respondent instituted a criminal complaint that the petitioner has taken forcible possession of the tenement on 22nd February, 1990 at Chhani Police Station and that too, after the receipt of the summons and the show cause notice issued by the trial court in this very suit. This telltale itself would show that for the first time, with a view to fabricate evidence, the respondents instituted a criminal complaint against the petitioner on coming to know that the suit has been instituted by the petitioner against them. The second material ignored by the

appellate court is the report of the Commissioner, which Commissioner had been appointed by the trial court itself, who had clearly recorded while executing the Commission and that too, in presence of both the parties that the petitioner was found to be in habitation of the tenement, which also included his household items.

Lastly, it is not understood as to how the appellate court comes to a finding that the petitioner is a labourer in Nilkaanth Society, which is in the vicinity of the suit property and being so, he took the opportunity of breaking open the lock and unlawfully entering into the suit premises. In fact, there is no evidence worth the name to suggest anything of the kind. Ignoring the abovementioned aspects, in my view, is a clear material irregularity, which vitiates the impugned order. The same, must, therefore, be set aside. This Revision Application accordingly succeeds. The impugned order dated 22nd July, 1992 made by the Joint District Judge, Vadodara, is set aside and the order of the trial court dated 21st December, 1990 stands revived. Result is interim injunction against the respondents, restraining them from ousting the petitioner from the suit premises until final disposal of the suit. Rule is accordingly made absolute to the extent indicated. There shall, however, be no order as to costs.

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(apj)